

MICHAEL R. WARE  
3491 Sterling Crk. Rd.  
Jacksonville, OR 97530  
541-899-2785

CLERK, U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON

JAN 20 2009

LODGED \_\_\_\_\_ REC'D \_\_\_\_\_  
PAID \_\_\_\_\_ DOCKETED \_\_\_\_\_

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re:

MICHAEL R. WARE,

Debtor.

MICHAEL R. WARE

Plaintiff,

v.

BANK OF AMERICA

TOWN AND COUNTRY CHEVROLET

GENERAL MOTORS CORPORATION

Defendants.

Case No.: 08-62504-fra7

Adv. Pro. No.: 09-6007-fra

COMPLAINT ALLEGING VIOLATIONS OF  
OREGON UNLAWFUL TRADE PRACTICES  
ACT, THE FDIC FAIR CREDIT BILLING  
ACT AND CREDIT PRACTICES RULE,  
BREACH OF GOOD FAITH DUTY, BREACH  
OF FIDUCIARY DUTY, AND FRAUD

COME NOW the Debtor, Michael R. Ware, to make a complaint against  
Bank of America, Town and Country Chevrolet, and General Motors  
Corporation in an adverse proceeding within case number 08-62504-fra7.

By the defendants' breach of their duty of good faith to  
buyer/borrower and breach of their fiduciary duties, defendants'  
negligently caused economic duress and irreparable harm to plaintiff's  
livelihood and welfare through violation of the Uniform Commercial  
Codes (UCC) of the United States and the State of Oregon; the FDIC Fair

1 Credit Billing Act and Credit Practices Rule; and violation of the  
2 Oregon Unlawful Trade Practices Act. Plaintiff, Michael R. Ware  
3 alleges at all times material herein:

### 4 **Jurisdiction**

5 This matter comes before the United States Bankruptcy Court  
6 District of Oregon and involves core and non-core matters and involves  
7 parties inside and outside of the bankruptcy proceedings, of which and  
8 whom, should be litigated jointly to reduce confusion and expense.

### 9 **Parties**

10 1. Plaintiff, Michael R. Ware, resides at 3491 Sterling Crk  
11 Rd., Jacksonville, OR 97530.

12 2. First defendant, Bank of America, is an international  
13 banking system and does business in Oregon with headquarters located at  
14 100 North Tryon Street, Charlotte, NC 28202.

15 3. Second defendant, Town and Country Chevrolet, is an Oregon  
16 new car dealership located at 2045 Hwy 99 North, Ashland, OR 97520,  
17 Oregon Dealer Number DA 2399

18 4. Third defendant, General Motors Corporation, is an  
19 international fabricator/manufacturer and does business nationwide  
20 including Oregon through dealerships and parts businesses and its  
21 headquarters is located in Detroit, MI. and the mailing address is:  
22 General Motors Corporation, P.O. Box 33170, Detroit, MI 48232-5170

### 23 **General Factual Allegations**

24 5. On October 1, 2003, plaintiff walked into the Town and Country  
25 Chevrolet (TC Chevy) Showroom where a salesman named Scott asked the

1 plaintiff if he needed any help. Plaintiff stated he was looking for a  
2 4 wheel drive pick-up truck preferably a diesel for heavy hauling that  
3 would pull a fully loaded 16,000 lb trailer. Whether it had a crew cab  
4 or not didn't really matter, but it would be nice. The salesman took  
5 the plaintiff around the lot and showed the plaintiff all sorts of  
6 trucks. The plaintiff was about to leave TC Chevy when he was told by  
7 the sales manager that a "Work Truck" was on its way down from Salem and  
8 to wait just a little while until it arrived. After what seemed like a  
9 two hour wait, the truck finally arrived. It was a 2007 Chevy 2500HD  
10 Silverado "Work Truck" with the trailer package. The salesmen said that  
11 it was the truck that plaintiff wanted, so we proceeded to negotiate and  
12 to finance the transaction with Bank of America which wasn't TC Chevy's  
13 first choice or plaintiff's either, because Bank of America didn't want  
14 to finance it under the business name, but plaintiff was told by 5 Star  
15 Credit that they would refinance under plaintiff's business name, so TC  
16 Chevy started the financing with Bank of America. The truck had an  
17 electrical problem with the speedometer and all the info wouldn't show,  
18 but the sales people said it could be fixed in a couple of days. No one  
19 was really sure how many miles it had on it, but they assured me that it  
20 was a brand new truck and they would fix the speedometer in a couple of  
21 days. So the finance/contract guy just put 350 miles down for the sale  
22 mileage and plaintiff agreed to that as long as the actual mileage could  
23 be determined within the next couple of days when they fixed it. While  
24 Plaintiff drove the truck home, there was a loud screech coming from the  
25 front and it smelled like wires were burning. The next day plaintiff  
took the truck back to TC Chevy and told them about the problems. The

1 problems couldn't be reproduced and the speedometer couldn't be fixed  
2 either. Plaintiff was scheduled for another time. Plaintiff discovered  
3 he didn't have an owner's manual. Plaintiff was given his owner's manual  
4 three weeks later. Two weeks later Plaintiff discovered the bumpers on  
5 his "Work Truck" were 75% plastic. TC Chevy could not fix the  
6 speedometer either. Up to that point, all the mileage put on the truck  
7 was back and forth to TC Chevy. At that point, Plaintiff told the  
8 salesman that the "Work Truck" didn't have steel bumpers and it was a  
9 lemon and he didn't want anything more to do with the truck and he was  
10 going to leave it on the lot. The new sales manager told plaintiff he  
11 would have the truck towed to the impound yard and plaintiff would have  
12 to pay all the expense, if he left it on the lot. Plaintiff asked the  
13 sales manager if he'd like to talk to his attorney. The sales manager  
14 said not to do that because then he couldn't work anything out with  
15 plaintiff. So, plaintiff left TC Chevy and called to schedule a repair  
16 on the speedometer. The next time Plaintiff arrived at TC Chevy he was  
17 told that the new 2007-2008 parts that would fix the speedometer and the  
18 trailer brake electrics were defective and it would take time for GM to  
19 work that out. So, he was scheduled for another stab at the electrics  
20 and this time an older used part was used to replace the defective part  
21 and plaintiff finally received the owner's manual. The system finally  
22 worked, but the burning wire smell didn't go away and the mileage that  
23 ended up on the truck didn't add-up. TC Chevy offered to get Plaintiff  
24 another truck but couldn't do it in time to make it work for the monthly  
25 payments, which was approximately two months later. Plaintiff talked to  
his attorney about the problem in the middle of November 2007 and the

1 first of December 2007, when his attorney sent a letter to TC Chevy  
2 citing the law. The letter told TC Chevy to contact the finance company  
3 and tell them about the problems. TC Chevy apparently did not contact  
4 the finance company because Bank of America kept billing the plaintiff.  
5 Bank of America called plaintiff after about two or three months of not  
6 receiving any payment and plaintiff told Bank of America about the  
7 problems and to contact TC Chevy about the problems followed with a  
8 letter that said the same. The representative for Bank of America told  
9 plaintiff over the phone that he would place notes in the account about  
10 the matter. There were no more phone calls about the matter, so  
11 plaintiff assumed the matter was taken care of. Then plaintiff received  
12 another bill from Bank of America and later that month the truck was  
13 repossessed in the middle of May 2008, but wasn't sold until June 24,  
14 2008. Plaintiff had written to the GM arbitration department about the  
15 problems, but the only thing that was received back from GM was a couple  
16 of evaluation forms. It was like General Motors Inc. didn't care about  
17 the problems with their agents or their truck. Plaintiff sent the  
18 evaluation forms and they completely ignored the plaintiff and his  
19 problems.

### 20 Cause of Action

21 6. All allegations in paragraph 5. are incorporated with the  
22 following causes of action herein:

23 a. The lender/creditor, Bank of America is liable for breach of  
24 its duty of good faith to forbear or to exercise remedies otherwise  
25 available to it. Bank of America also misrepresented and/or falsified  
information to the credit bureaus.

1 b. Where Bank of America received information that there was a  
2 problem with the sale contract, the manufacturer, seller, and the  
3 vehicle itself, having multiple problems that couldn't be repaired on  
4 time to make prompt payment to Bank of America available, and Bank of  
5 America ignored the information and failed to act with due diligence in  
6 a responsible manner.

7 c. Where TC Chevy had the duty to disclose the problems with the  
8 vehicle and the contract to General Motors and Bank of America and chose  
9 not to, committed the act of fraud.

10 d. Where TC Chevy provided used/old parts to temporarily  
11 repair the vehicle, and could not repair the vehicle in that manner  
12 anyway, since that was not the root problem committed fraud.

13 e. Where TC Chevy chose not to take the truck back after it was  
14 shown that there was a question as to breach of contract.

15 f. Where TC Chevy ignored customer's request and sold the wrong  
16 vehicle to customer and denied consumer rights to customer, and in all,  
17 caused economic duress.

18 g. Where General Motors Corporation ignored plaintiff's request  
19 for arbitration and along with the other parties caused plaintiff's  
20 economic duress.

21 h. Where General Motors Corporation manufactured and sold a defective  
22 and deficient product that was falsely promoted as a durable "work truck".

23 i. Where, together, all three of the defendants separate and combined  
24 breach of their duty of good faith to buyer/borrower; breach of their fiduciary  
25 duties, including breach of warranty, defendants' negligently caused economic  
duress and irreparable harm to plaintiff's livelihood and welfare through


1 violation of the Uniform Commercial Codes (UCC) of the United States and the  
2 State of Oregon; the FDIC Fair Credit Billing Act and Credit Practices Rule;  
3 violation of the Oregon Unlawful Trade Practices Act; and fraud.

4 **Remedies**

5 7. Above all, plaintiff should be given his good credit rating  
6 back with no record of bankruptcy. If this is an available remedy,  
7 plaintiff needs \$55,000.00 in compensatory and punitive damages and any  
8 other remedy the court may have or may deem proper and equitable.

9 8. If this is not an available remedy, plaintiff needs \$1,500,000.00  
10 dollars in compensatory and punitive damages and any other remedy the court  
11 may have or may deem proper and equitable.

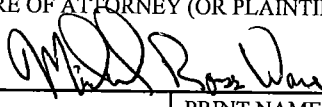
12 Dated this 16<sup>th</sup> day of January, 2009



13 MICHAEL R. WARE  
14 3491 Sterling Crk. Rd.  
15 Jacksonville, OR 97530  
16 541-899-2785  
17  
18  
19  
20  
21  
22  
23  
24  
25

<b>B104 (10/06) ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Page 2)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)		
<b>PLAINTIFFS</b> MICHAEL ROSS WARE	<b>DEFENDANTS</b> Bank of America Inc. Town and Country Chevrolet Inc. General Motors Corporation Inc.  <div style="text-align: right;">           CLERK, U.S. BANKRUPTCY COURT            DISTRICT OF OREGON   <b>JAN 20 2009</b> </div> <div style="text-align: right;">           LODGED _____ REC'D _____            PAID _____ DOCKETED _____         </div>			
<b>ATTORNEYS (Firm Name, Address, and Telephone No.)</b> 3491 STERLING CRK RD JACKSONVILLE, OR 97530	<b>ATTORNEYS (If Known)</b>			
<b>PARTY (Check One Box Only)</b> <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> Creditor <input type="checkbox"/> Trustee <input type="checkbox"/> U.S. Trustee <input type="checkbox"/> Other	<b>PARTY (Check One Box Only)</b> <input type="checkbox"/> Debtor <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Trustee <input type="checkbox"/> U.S. Trustee <input type="checkbox"/> Other			
<b>CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)</b> Breach of Good Faith and Fiduciary Duties and COMPLAINT ALLEGING VIOLATIONS OF OREGON UNLAWFUL TRADE PRACTICES ACT, THE FDIC FAIR CREDIT BILLING ACT AND CREDIT PRACTICES RULE, BREACH OF GOOD FAITH DUTY, BREACH OF FIDUCIARY DUTY, AND FRAUD				
<b>NATURE OF SUIT</b> (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="vertical-align: top; width: 50%;"> <b>FRBP 7001(1) - Recovery of Money/Property</b>  <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property  <input type="checkbox"/> 12-Recovery of money/property - §547 preference  <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer  <input type="checkbox"/> 14-Recovery of money/property - other   <b>FRBP 7001(2) - Validity, Priority or Extent of Lien</b>  <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property   <b>FRBP 7001(3) - Approval of Sale of Property</b>  <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)   <b>FRBP 7001(4) - Objection/Revocation of Discharge</b>  <input type="checkbox"/> 41-Objection/revocation of discharge - §727(c), (d), (e)   <b>FRBP 7001(5) - Revocation of Confirmation</b>  <input type="checkbox"/> 51-Revocation of confirmation   <b>FRBP 7001(6) - Dischargeability</b>  <input type="checkbox"/> 66-Dischargeability - §523(a)(1), (14), (14A) priority tax claims  <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud  <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny   <div style="text-align: center;">(continued next column)</div> </td> <td style="vertical-align: top; width: 50%;"> <b>FRBP 7001(6) - Dischargeability (continued)</b>  <input type="checkbox"/> 61-Dischargeability §523(a)(5), domestic support  <input type="checkbox"/> 68-Dischargeability §523(a)(6), willful and malicious injury  <input type="checkbox"/> 63-Dischargeability §523(a)(8), student loan  <input type="checkbox"/> 64-Dischargeability §523(a)(15), divorce/sep property settlement/decreed  <input type="checkbox"/> 65-Dischargeability - other   <b>FRBP 7001(7) - Injunctive Relief</b>  <input checked="" type="checkbox"/> 71-Injunctive relief - reinstatement of stay  <input checked="" type="checkbox"/> 72-Injunctive relief - other   <b>FRBP 7001(8) - Subordination of Claim or Interest</b>  <input type="checkbox"/> 81-Subordination of claim or interest   <b>FRBP 7001(9) - Declaratory Judgment</b>  <input checked="" type="checkbox"/> 91-Declaratory judgment   <b>FRBP 7001(10) - Determination of Removed Action</b>  <input type="checkbox"/> 01-Determination of removed claim or cause   <b>Other</b>  <input type="checkbox"/> SS-SIPA Case - 15 USC §§78aaa <i>et. seq.</i>  <input checked="" type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)           </td> </tr> </table>			<b>FRBP 7001(1) - Recovery of Money/Property</b> <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other  <b>FRBP 7001(2) - Validity, Priority or Extent of Lien</b> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property  <b>FRBP 7001(3) - Approval of Sale of Property</b> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)  <b>FRBP 7001(4) - Objection/Revocation of Discharge</b> <input type="checkbox"/> 41-Objection/revocation of discharge - §727(c), (d), (e)  <b>FRBP 7001(5) - Revocation of Confirmation</b> <input type="checkbox"/> 51-Revocation of confirmation  <b>FRBP 7001(6) - Dischargeability</b> <input type="checkbox"/> 66-Dischargeability - §523(a)(1), (14), (14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny  <div style="text-align: center;">(continued next column)</div>	<b>FRBP 7001(6) - Dischargeability (continued)</b> <input type="checkbox"/> 61-Dischargeability §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability §523(a)(15), divorce/sep property settlement/decreed <input type="checkbox"/> 65-Dischargeability - other  <b>FRBP 7001(7) - Injunctive Relief</b> <input checked="" type="checkbox"/> 71-Injunctive relief - reinstatement of stay <input checked="" type="checkbox"/> 72-Injunctive relief - other  <b>FRBP 7001(8) - Subordination of Claim or Interest</b> <input type="checkbox"/> 81-Subordination of claim or interest  <b>FRBP 7001(9) - Declaratory Judgment</b> <input checked="" type="checkbox"/> 91-Declaratory judgment  <b>FRBP 7001(10) - Determination of Removed Action</b> <input type="checkbox"/> 01-Determination of removed claim or cause  <b>Other</b> <input type="checkbox"/> SS-SIPA Case - 15 USC §§78aaa <i>et. seq.</i> <input checked="" type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
<b>FRBP 7001(1) - Recovery of Money/Property</b> <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other  <b>FRBP 7001(2) - Validity, Priority or Extent of Lien</b> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property  <b>FRBP 7001(3) - Approval of Sale of Property</b> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)  <b>FRBP 7001(4) - Objection/Revocation of Discharge</b> <input type="checkbox"/> 41-Objection/revocation of discharge - §727(c), (d), (e)  <b>FRBP 7001(5) - Revocation of Confirmation</b> <input type="checkbox"/> 51-Revocation of confirmation  <b>FRBP 7001(6) - Dischargeability</b> <input type="checkbox"/> 66-Dischargeability - §523(a)(1), (14), (14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny  <div style="text-align: center;">(continued next column)</div>	<b>FRBP 7001(6) - Dischargeability (continued)</b> <input type="checkbox"/> 61-Dischargeability §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability §523(a)(15), divorce/sep property settlement/decreed <input type="checkbox"/> 65-Dischargeability - other  <b>FRBP 7001(7) - Injunctive Relief</b> <input checked="" type="checkbox"/> 71-Injunctive relief - reinstatement of stay <input checked="" type="checkbox"/> 72-Injunctive relief - other  <b>FRBP 7001(8) - Subordination of Claim or Interest</b> <input type="checkbox"/> 81-Subordination of claim or interest  <b>FRBP 7001(9) - Declaratory Judgment</b> <input checked="" type="checkbox"/> 91-Declaratory judgment  <b>FRBP 7001(10) - Determination of Removed Action</b> <input type="checkbox"/> 01-Determination of removed claim or cause  <b>Other</b> <input type="checkbox"/> SS-SIPA Case - 15 USC §§78aaa <i>et. seq.</i> <input checked="" type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)			
<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23		
<input checked="" type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$TBA		
Other Relief Sought Plaintiff's good credit re-established and no record of filing bankruptcy and \$25,000.00 compensatory and punitive damages or otherwise \$1,500,000.00 compensatory and punitive damages.				



BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR <b>Michael Ross Ware</b>		BANKRUPTCY CASE NO. <b>08-62504-fra7</b>
DISTRICT IN WHICH CASE IS PENDING <b>Oregon</b>	DIVISIONAL OFFICE <b>Eugene</b>	NAME OF JUDGE <b>Judge Alley</b>
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE <b>1/16/09</b>	PRINT NAME OF ATTORNEY (OR PLAINTIFF) <b>Michael Ross Ware</b>	

### INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the adversary proceeding is filed electronically through the court's ECF system. When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Parties.** Give the names of the parties to the adversary proceeding exactly as they appear on the complaint. Give the names and addresses of the attorneys if known.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.